

International Law Studies—Volume 6

International Law Topics

INTERNATIONAL LAW TOPICS AND DISCUSSIONS.

TOPIC I.

What regulations should be made in regard to the use of false colors by public vessels in war?

CONCLUSION.

1. The use of false colors by public vessels in war is prohibited.

2. When a public belligerent vessel summons a vessel to lie to, or before firing a gun and during action, the national colors shall be displayed.

3. Any vessel not showing her colors in response to a summoning gun may be considered and treated as an enemy.

DISCUSSION AND NOTES.

Reasons for discussion.—The present regulations in regard to the use of false colors by belligerent vessels in time of war are generally understood to permit the use of false colors before firing a gun. These regulations are an inheritance from an early time. These rules were formulated in the days of wooden sailing vessels and short-range guns. While the rules of war have changed in many respects, these rules have remained unchanged and have received a general adherence. These rules were originally recognized at a time when neutral rights were little considered and the use of a neutral flag by a belligerent would be regarded as a matter with which the neutral party had little concern. Indeed, it was often questioned whether the neutral had any rights which the belligerent was bound to respect.

The war vessel of early days was also very different from that of to-day. The approach of the slow sailing

vessel of the seventeenth century would allow time to determine its identity in most instances and to provide for action in case of mistake. A single shot from a gun of the early type into a vessel of its day would not, in general, have an effect corresponding to that of a shot sent into the complicated mechanism of a modern war vessel. The fighting in the period before the middle of the nineteenth century was at much shorter range, and time and space played a very different part in determining the issue of the conflict. Surprise was not, in early conditions, a matter of gravest importance. In the old days the contests were relatively long. In modern battles the first shot or those following soon after seem to have been very often the decisive ones.

The risk from permitting the use of false colors is far greater than formerly, so it would seem that the protection against the risk should be correspondingly developed.

False colors in land warfare.—The use of false colors on land and the toleration of other forms of deceit was formerly common, but at present in land warfare false colors are forbidden. The regulations are similar to the following:

Instructions United States Army, 1863, Article 65—

The use of the enemy's national standard, flag, or other emblem of nationality, for the purpose of deceiving the enemy in battle, is an act of perfidy by which they lose all claim to the protection of the laws of war.

Brussels Rules, 1874, articles 12, 13:

Art. 12. The laws of war do not allow to belligerents an unlimited power as to choice of means of injuring the enemy.

Art. 13. According to this principle are strictly forbidden—

(f) Abuse of the flag of truce, the national flag, or the military insignia or uniform of the enemy, as well as the distinctive badges of the Geneva Convention.

Oxford Manual, 1880, section 8:

It is forbidden—

(d) To make improper use of the national flag, of signs of military rank, or of the uniform of the enemy, of a flag of truce, or the protective marks prescribed by the Convention of Geneva.

Hague Convention, Laws and Customs of War on Land,
1899, Article XXIII:

Besides the prohibitions provided by special conventions, it is especially prohibited—

(f) To make improper use of a flag of truce, the national flag, or military ensigns and the enemy's uniform, as well as the distinctive badges of the Geneva Convention.

It has come to be generally accepted that "deceit involving perfidy should be forbidden."

The flag is the emblem held most esteemed and sacred among states. It is the usual method of showing allegiance and is to be raised only on sufficient authority.

The use of false colors on land or similar perfidy deprives the users of the "claim to the protection of the laws of war."

There has not been a similar restriction of the use of false colors on the sea, nor is there at present a unanimity of opinion in regard to the practice, as shown in various authorities.

French attitude toward the use of false colors at sea.—There have been many expressions in regard to the use of false colors showing the French point of view.

One of the earliest provisions in regard to the use of false colors at sea is that of France in the ordinance of March 17, 1696:

Sa Majesté a ordonné et ordonne que tous les capitaines commandant ses vaisseaux ou ceux armés en course par ses sujets, seront tenus d'arborer le pavillon français avant de tirer le coup d'assurance ou de semonce. Défenses très expresses leur sont faites de tirer sous pavillon étranger à peine d'être privés, eux et leurs armateurs, de tout le provenu de la prise, qui sera confisqué au profit de Sa Majesté, si le vaisseau est jugé ennemi, et en cas que le vaisseau soit jugé neutre, les capitaines et armateurs seront condamnés aux dépens, dommages et intérêts des propriétaires.

A French ordinance of May 22, 1803, provides that the French flag shall be displayed before the first shot is discharged at the enemy. The decree of August 15, 1851, is as follows:

Avant de commencer l'action, le commandant en chef fait arborer les marques distinctives et hisser les pavillons français sur tous les bâtiments. Dans aucun cas, il ne doit combattre

sous un autre pavillon. Dans les combats de nuit, il ordonne qu'un fanal soit placé au-dessus du pavillon de poupe.

Ortolan says:

C'est ainsi que dans les guerres maritimes on peut, sans forfaire à l'honneur, attirer son ennemi au combat ou échapper à un ennemi supérieur en hissant un faux pavillon; mais c'est un acte réprouvé de commencer ou de continuer le combat sous un pavillon autre que le sien. Cet acte est puni par les ordonnances françaises. Anciennement il était même défendu de tirer le coup de canon à poudre, appelé *coup de canon de semonce*, sous un pavillon étranger. (2 Diplomatie de la mer, p. 29.)

De Cussy maintains that—

Le combat sous pavillon étranger est un acte de félonie; il est réputé acte de *piraterie*; ce serait vainement qu'on voudrait faire envisager *comme une ruse permise* pour surprendre l'ennemi, de s'être avancé vers lui, couvert d'un pavillon ami.

Si, dans certaines circonstances, *la ruse est licite*, c'est uniquement, quand elle ne blesse ni l'honneur ni la morale.

Masquer son *dessein d'attaque* sous un pavillon ami, afin d'écarter toute défiance du côté du bâtiment qu'il s'agit d'approcher, est une action qu'aucun commandant de bâtiment de guerre ne voudrait, de nos jours, se permettre; sa dignité personnelle, la dignité de son pays, l'honneur militaire s'opposeraient non pas seulement à la mise en œuvre d'un semblable moyen, mais même à ce que la pensée pût s'en présenter à son esprit. (I Phases et causes célèbres du droit maritime, p. 257, sec. 25.)

The use of the uniform of the enemy for purposes of deceit is generally condemned. Pradier-Fodéré says:

Les considérations qui devraient faire regarder comme illicite l'usurpation de l'uniforme de l'ennemi s'appliquent, à plus forte raison, à l'usurpation de son drapeau. Je dis à *plus forte raison*, parce que le drapeau est le signe traditionnel qui représente plus particulièrement la nation, est l'affirmation la plus respectable de la nationalité, et qu'arborer un faux drapeau c'est faire une affirmation fausse, dont le résultat peut être de rendre plus atroces les horreurs de la guerre en supprimant la confiance qui en modère les rigueurs. D'accord avec plusieurs auteurs et avec la pratique, Bluntschli enseigne cependant qu'il n'est pas contraire au droit international de tromper l'ennemi en faisant usage de son drapeau, de son pavillon, pourvu qu'avant d'en venir aux mains chaque corps de troupes, chaque navire, arbore ses couleurs. Je conviens qu'il est plus facile d'arborer un drapeau au moment d'ouvrir le feu que de changer d'uniforme. Ortolan dit que dans les guerres maritimes on peut, sans forfaire à l'honneur, attirer son ennemi au combat, ou échapper à un ennemi

supérieur, en hissant un faux pavillon, mais que c'est un acte réprouvé de commencer ou de continuer le combat sous un pavillon autre que le sien. Il rappelle que cet acte est interdit par les ordonnances françaises; qu'anciennement il était même défendu de tirer le coup de canon à poudre, appelé *coup de canon de semonce*, sous un pavillon étranger; que la loi française, depuis, a ordonné seulement d'arborer le pavillon national avant de tirer à boulet sur l'ennemi; qu'avant de commencer l'action, le commandant en chef doit faire arborer les marques distinctives et hisser le pavillon français sur tous les bâtiments, et que dans aucun cas il ne doit combattre sous un autre pavillon. Que l'échange d'un coup de canon à blanc ou à boulet perdu, suivi du fait d'arborer le vrai pavillon, entre deux navires de guerre se rencontrant en mer, soit l'équivalent de la parole d'honneur des commandants qu'ils se présentent sous leurs véritables couleurs, il n'y a rien à reprendre dans ce cérémonial; mais il faut convenir qu'il serait préférable que sous aucun prétexte les belligérants n'usurpassent les drapeaux et pavillons d'autrui. (6 Droit international public, sec. 2760, p. 958.)

Pillet says in a note upon the use of false colors:

Il est à peine besoin de noter que cette règle absolue de loyauté n'interdit pas seulement d'arborer un faux pavillon au moment d'un combat naval. Elle interdit tout acte d'hostilité sous un pavillon emprunté; ainsi le fait de déguiser sa nationalité pour tenter un débarquement, ou pour franchir une passe défendue par des batteries à l'effet de procéder à un bombardement. Tout acte d'hostilité proprement dite doit être accompli par un navire sous ses véritables couleurs. Cette irrégularité ne saurait être admise même à titre de représailles. (Les lois actuelles de la guerre, n. 2, sec. 70 bis.)

Pillet also maintains that—

On peut par l'emploi d'un faux pavillon essayer de se soustraire à la poursuite de l'ennemi, peut-être même de forcer un blocus; mais il est absolument interdit par les règlements, aussi bien que par les usages de la guerre, de combattre sous un faux pavillon; toute infraction à cette règle serait inexcusable, même en cas de nécessité des plus pressantes. (Les lois actuelles de la guerre, sec. 70 bis.)

Rosse says:

Le droit des gens autorise, en temps de guerre, pour se soustraire aux poursuites de l'ennemi, l'emploi d'un pavillon supposé; mais il l'interdit rigoureusement comme moyen d'attaque ou de surprise.

Dès que le feu est ouvert, l'usage invariable des peuples civilisés veut que chaque navire établisse loyalement sa nationalité et

combattre sous ses propres couleurs. (Guide international du commandant du bâtiment de guerre, p. 112.)

Other opinions.—Calvo sets forth his opinion as follows:

Le droit des gens autorise en temps de guerre pour se soustraire aux poursuites de l'ennemi l'emploi d'un pavillon supposé; mais il l'interdit rigoureusement comme moyen d'attaque ou de surprise. Dès que le feu est ouvert, l'usage invariable des peuples civilisés veut que chaque navire établisse loyalement sa nationalité et combatte sous ses propres couleurs. Le fait de combattre sous pavillon étranger est une violation du droit des gens, qui fait considérer et traiter comme pirates ceux qui s'en rendent coupables. (4 Le droit international, sec. 2124.)

Glass gives the following statement of the general principle in regard to stratagems:

But while we are bound to hold sacred all promises to an enemy, and keep all engagements, expressed or implied, we may take any advantage of an enemy possible by stratagem or surprise without perfidy; indeed, to make use of such means is highly commendable. On this account the circulation of any intelligence calculated to deceive an enemy is allowable.

A vessel may hoist false colors to decoy an enemy within range of her guns, but to make signals of distress for such a purpose would be an act of the greatest perfidy. (Marine International Law, p. 392.)

Halleck says of the rule in regard to the affirming gun:

The ancient rule of maritime law, as stated by Valin, was that the *affirming gun* (*coup de semonce, ou d'assurance*) could be fired only under the national flag. Such were the provisions of the ancient ordinances of France. But article 33 of the Arrêté du 2 Prairial merely prohibited the firing a shot (*tirer à boulet*) under a false flag, and the law of April 10, 1825, article 3, provided that captains and officers who *commit acts of hostility* under a flag other than that of the state by which they are commissioned, shall be treated as pirates. Ortolan says that the affirming gun may be fired under false colors, but all acts of hostility must be under the national flag. Massé and Hautefeuille seem to adopt the opinion that the affirming gun (*coup de semonce*) should be fired only under national colors. But as such gun is in no respect an act of hostility, we can perceive no good reason why it may not be fired under false colors. (International Law, Baker's ed., p. 570.)

Testa gives the Portuguese point of view as follows:

Dans la guerre maritime, le stratagème de hisser un pavillon étranger pour tromper l'ennemi supérieur en forces et éviter

ainsi le combat, est autorisé; il est permis aussi aux navires de guerre de se dissimuler par le désordre de leur tenue et de se faire prendre ainsi pour des navires de commerce; mais engager le combat ou même affirmer par un coup de canon la nationalité du navire sous un pavillon qui ne lui appartient pas; demander un secours et simuler un danger pour attirer l'ennemi et le surprendre ensuite, sont des actes réprouvés par tous. Ce ne sont plus là des stratagèmes de guerre; c'est la trahison et l'offense aux lois dictées par l'honneur et la morale universelle, et en certains cas même, aux lois qui règlent le respect pour la neutralité." (Droit public international maritime, p. 144.)

Risley says there is some difference of opinion in regard to the raising of the true flag before firing the affirming gun.

One more lawful stratagem should perhaps be mentioned, and that is the sailing of a ship under false colors. A ship of war may approach an enemy under false colors, but must hoist her own colors before she fires. On getting within range she usually fires an "affirming" gun, or a *coup de semonce*, across the other ship's bows, warning her to heave to. This is merely a preliminary to search, or, if the other vessel shows fight, to hostilities, and therefore some authorities maintain that the true colors need not be hoisted until after the affirming gun has been fired. The general opinion is that she must hoist her national colors before she fires at all. (Law of War, p. 121.)

Hall states his idea of the use of false colors as follows:

A curious arbitrary rule affects one class of stratagems by forbidding certain permitted means of deception from the moment at which they cease to deceive. It is perfectly legitimate to use the distinctive emblems of an enemy in order to escape from him or to draw his forces into action; but it is held that soldiers clothed in the uniforms of their enemy must put on a conspicuous mark by which they can be recognized before attacking, and that a vessel using the enemy's flag must hoist its own flag before firing with shot or shell. The rule, disobedience to which is considered to entail grave dishonor, has been based on the statement that "in actual battle, enemies are bound to combat loyally and are not free to insure victory by putting on a mask of friendship." In war upon land victory might be so insured, and the rule is consequently sensible; but at sea—and the prohibition is spoken of generally with reference to maritime war—the mask of friendship no longer misleads when once fighting begins, and it is not easy to see why it is more disloyal to wear a disguise when it is obviously useless, than when it serves its purpose. (International Law, 5th ed., p. 538.)

Maine says:

It must, however, be observed that no deceit is allowable where an express or implied engagement exists that the truth should be acted or spoken. To violate such an engagement is perfidy, and contrary alike to the customs of war and the dictates of honor. For example, it is a gross breach of faith and an outrage against the customs of war to hoist a hospital flag on buildings not appropriated to the wounded, or to use a place protected by a hospital flag for any other purpose than a hospital. (International Law, p. 149.)

Risley says:

A fraudulent use of signals of distress as a means of approach is not legitimate sailing under false colors, but an act of treachery. (Law of War, p. 121.)

It is difficult to understand upon what ground the flying of false colors can be justified when used solely for the purpose of getting within range of an opponent when it is forbidden to fire under false colors the shot which is thus made effective. Some statements are to the effect that no acts of hostility may be committed under a false flag. A recent decision of the Japanese court seems to hold properly that hostilities are not merely those acts involved in physical contact of the belligerent forces, but that hostilities date from the time when one force sets out with the intention of engaging the other—i. e., when the Japanese fleet sailed from Sasebo, and not at the time when it attacked the Russians at Port Arthur.

Questions also arise as to the use of false colors when passing a fortification, landing troops, laying mines, or in actions not involving the firing of a gun.

Some authorities maintain that such acts are as directly hostile as the firing of a gun and should not be masked under false colors, on the ground that perfidy in war is forbidden.

The right to fly the national flag being one most carefully guarded, and the flag being ordinarily held as the emblem most entitled to respect, third powers are now beginning to ask by what right a belligerent flies a flag to which it has no right.

False colors during an insurrection.—The propriety of the use of the United States flag by a regular war vessel

of the established Government of Venezuela during the period of insurrection was under consideration in 1902.

The case is summarized in the letter of Mr. Bowen to Mr. Hay:

No. 127.]

LEGATION OF THE UNITED STATES,
Caracas, September 24, 1902.

SIR: I have the honor to inform you that on the 22d instant, at 7 p. m., I called on the minister for foreign affairs and told him that I had just received the confirmation of a rumor I had heard several days before, to the effect that the Venezuelan war ship *Restaurador* had steamed up the Orinoco and entered the port of Ciudad Bolivar flying the American flag at her foremast, it having been placed there with the object of deceiving the revolutionists and of approaching Ciudad Bolivar so closely as to permit her to bombard the town effectively.

I then said to him:

"Your captain dishonored the American flag; he should be ordered to raise it and salute it, and your Government should apologize."

He answered that he had heard nothing about the incident, and that he desired to have several days so as to investigate it. I replied:

"The facts that I have presented to you are indisputable, and I can give you only twenty hours, for I feel that at the end of that time I must cable the facts to my Government."

He thereupon agreed to act within the time specified. Before I left him I told him that the captain of the *Restaurador* had called the day before on Captain Diehl, the commander of the U. S. S. *Marietta*, stating that he had displayed it simply as he would have a flag of truce, and that he hauled it down before beginning the bombardment. I characterized the captain's explanation as neither credible nor satisfactory, and the minister's silence proved that he believed I meant what I said.

The following morning the first secretary of state called on me at 11 o'clock, and, after stating that his chief was ill in bed, informed me that he had been sent by his Government to express its regret that the American flag had been used improperly by the *Restaurador*, and that orders would be sent to her captain that afternoon to raise it and salute it with 21 guns. He then spoke of the earnest desire entertained by his Government to maintain friendly relations with the United States, and to remain on the best of terms with this legation. I assured him that the sentiments he had expressed are reciprocated most warmly by both the United States Government and by this legation, and I sent by him my best wishes to the minister for foreign affairs for his speedy recovery.

After he had gone I sent word to Captain Diehl, through Mr. Goldschmidt, our consul at La Guaira, that the *Restaurador* would salute our flag before sunset. Shortly after 5 o'clock Mr. Goldschmidt telephoned me that the full salute of 21 guns had just been fired by the *Restaurador*, and that our flag meanwhile had been displayed at her foremast.

My reason for not cabling to you for instructions, and for not entering into a written discussion with the Venezuelan Government, was because I feared if there was any delay the *Restaurador* might leave the port of La Guaira, and thus avoid doing honor to the flag she had insulted.

During my conversation with the Venezuelan authorities I took the precaution to have Mr. Russell, the secretary of this legation, present, and I am indebted to him for several remarks he made that helped to render the settlement of the matter satisfactory.

I am, etc.,

HERBERT W. BOWEN.

(U. S. Foreign Relations, 1902, p. 1073.)

Pillet's zone of control.—Pillet proposed a plan for a circle of jurisdiction about a war vessel, entering which any war vessel which had not been recognized would be treated as an enemy. Pillet maintains that this would work to the advantage of both belligerent and neutral.

Il faudrait reconnaître au navire de guerre belligérant une zone de mer adjacente suffisante à sauvegarde et dans laquelle aucun autre navire de guerre non reconnu ne pourrait entrer sans être considéré et traité comme ennemi. Le belligérant échapperait alors à la dure alternative de couler un neutre innocent de toute intention hostile, ou de voir un adversaire masqué s'approcher à une distance telle qu'au moment où il révélerait sa véritable qualité il serait impossible d'échapper à ses coups. La situation serait ainsi nettement déterminée et tout navire armé pénétrant, sans avoir justifié de sa nationalité neutre, dans cette zone de protection et de sécurité assumerait par là même les droits et les risques attachés à la qualité de belligérant. Les combattants y gagneraient de se combattre à visage découvert, les neutres vigilants y gagneraient aussi de ne plus être exposée à être pris par erreur pour des ennemis. (5 *Revue générale de Droit international public*, p. 448-449.)

Regulations as to false colors.—The British Manual of Naval Prize Law (1888) provides that—

The commander may chase, but under no circumstances may fire, under false colors. (No. 197.)

The Manual also provides that for bringing a vessel to, the commander—

should give warning by firing successively two blank guns, and then, if necessary, a shot across her bows; but before firing, the commander, if he has chased under false colors or without showing his colors, should be careful to hoist the British flag and pendant. (No. 200, p. 62.)

The Regulations of the Navy of the United States, 1905, provide that—

Under no circumstances shall he (the commander) commence an action or fight a battle without the display of the national ensign. (No. 293.)

The Japanese Regulations Governing Captures at Sea of 1904-5 provide that—

The captain of an imperial man-of-war may chase a vessel without hoisting the ensign of the imperial navy or under false colors. But before giving the vessel the order to stop he must display the ensign of the imperial navy. (Article LII.)

Summary.—The failure to display colors before firing a gun is in no sense an act of perfidy. There is in this no claim to identity or national character. It is for the enemy to find out of what nationality the approaching vessel may be. Until this is established the enemy must guard against surprise.

It is evident that there is a considerable diversity of opinion and regulation in regard to the use of false colors. It is evident that some clearer definition of the use of the flag should be made. It is questionable whether the present regulation secures the results which upon its face it purports to secure, i. e., denies the propriety of combat under a false flag, because the most essential part of a modern action may not be the firing of a gun, but in case of a vessel of inferior speed approaching one superior in speed, the important consideration for the inferior vessel is to come within a range from which it may be able to bring an effective shot to bear upon the superior vessel.

If the use of false colors be merely for the purpose of bringing a merchant vessel within the range of possible capture, then under present conditions it hardly seems a

practice of greatest importance, as the capture of merchant vessels is only a means to an end and not the prime object of modern warfare.

It is now generally considered that a neutral has an exclusive right to the use of his own flag and the right to prescribe under what conditions it may be used. Of course this right to the exclusive use of his own flag may place upon the neutral certain obligations to guard against its misuse.

A neutral would seem to be acting reasonably in demanding that his national emblem shall not be used by a belligerent to cover any act which may work injury to the other belligerent, which, as regards the neutral, is a friendly state. While the practice has hitherto been tolerated it seems to be an infringement of the natural rights of the neutral state. It may also work hardship for a neutral vessel, for when the use of its colors is permitted to either belligerent it can not surely establish its identity by raising its national flag. Such standards of action have long been eliminated from land warfare and its continuance on the sea is hardly in accord with the standard of fair dealing which generally obtains in naval warfare.

The prohibition of the use of false colors by international agreement would give to neutral war vessels much greater security in their ordinary and proper movements, i. e., in case war should break out between States A and B and a war vessel of neutral C, not knowing that war existed, should for any reason approach a harbor of B flying its true colors, it would be free from the risk it would otherwise incur.

The use of the form of stratagem involved in flying false colors does not seem to bring any advantage commensurate with the disadvantages.

It is admitted that where a vessel summons another to lie to the summoning vessel should make known its identity by displaying its proper flag, the same is true regarding a vessel before firing a gun in action. It is claimed by many, not without reason, that the rule should be extended to cover all classes of hostile action. To prohibit

altogether the use of false colors would be little, if any, in advance of this proposition, and would remove from consideration all question as to what constitutes hostile action.

On the whole, therefore, it would seem advisable to prohibit the use of false colors, but at the same time the prohibition should not deprive a belligerent of any proper means of attack or defense.

Pillet's proposed zone (p. 16) within which no other man-of-war, not recognized, can enter without being considered and treated as an enemy is open to objections. The limits of such an arbitrary zone are very difficult to determine. Its establishment would in some degree restrict the right of neutrals in the navigation of the high seas. A belligerent vessel should have the right to guard against attack from points outside any zone that might reasonably be established.

The existing practice that any vessel not showing her colors in response to a summons is liable to treatment as an enemy should be embodied in any new regulations which may be adopted. Such a regulation coupled with the prohibition of the use of false colors would enable a belligerent to assure himself of the nationality of an approaching vessel, or failing that, to take immediate action. It would relieve the belligerent of the risk of serious mistake which prevails when false colors are tolerated; for certainly it would be a grave misfortune to fire upon an innocent passing vessel on the sea on suspicion that she might be a belligerent under false colors.

It is held by some that the prohibition of the use of false colors should be limited to their use by the public vessels of the belligerents. It is argued, with much force, that the use of false colors by a neutral vessel would be in itself such strong evidence that the vessel was carrying contraband or engaged in unneutral service that the practice would be rare; and further, to prohibit a private or merchant vessel of a belligerent from using her enemy's or a neutral flag, as a possible means of diverting her enemy's attention and thus escaping capture, is to deprive her of a legitimate stratagem, which involves only per-

missible deceit, not the slightest degree of perfidy, and no injury to the neutral in case a neutral flag were used.

Conclusion.—To bring about results in accord with modern ideas, without undue restriction of belligerent action, regulations like the following are proposed:

1. The use of false colors by public vessels in war is prohibited.

2. When a public belligerent vessel summons a vessel to lie to, or before firing a gun and during action, the national colors shall be displayed.

3. Any vessel not showing her colors in response to a summoning gun may be considered and treated as an enemy.